

## REMARKS

This amendment is submitted during the first month following the shortened time frame set by the examiner. A separate petition under 37 C.F.R. § 1.136(a) and the large entity fee of \$120 pursuant to 37 C.F.R. § 1.17(a)(1) for a one-month extension are 5 submitted herewith. The extended date for response is Thursday, January 20, 2005.

### *Amendments to the Title and Specification*

The applicant has changed the wording of the title, and included additional language to clarify that this application incorporates by reference U.S. Provisional Application No. 60/457,645.

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### *Amendments to the Claims*

The applicant has amended independent claim 1 to include language referring to the “continuous” action of the apparatus. The applicant has amended independent claim 9 to include language referring to the “uninterrupted” action of the apparatus. The applicant has amended independent claims 1, 9 and 17 to positively recite reciprocation, replacing 15 the language “capable of reciprocating” in these claims. Dependent claims 2, 10 and 18 have also been amended to conform to the amendments made to the base claims.

### *First Rejection Under 35 U.S.C. § 103*

The examiner has first rejected claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,451,187 to Massey.

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The examiner asserts that Massey shows a packaging machine with a support structure for a film supply on the side of the machine, rollers to grip and feed the film from the supply, a plurality of product dispensers 18, a longitudinal heat sealer 15 that

form a plurality of seals on the film, a plurality of blades 61 aligned with the heat sealers, opposing cross heat sealers 20 and cross blades 75, 76, and that the longitudinal sealers, cross sealers and cross cutters reciprocate in the direction of the film movement.

The examiner then asserts, without identification of any prior art reference, that

5 that “the use of double film supply rolls (claims 1, 9 & 17), independent reciprocating mechanisms (claims 2, 10 & 17), opposing feed rollers (claims 3 & 13), and pumps (claims 5 & 15) are well known in the art and would have been obvious modification for their inherent benefits.”

In response, the applicant first contends that the statements above are not

10 sufficient to make out a *prima facie* case of obviousness. In the case of *In re Zurko*, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001), the Federal Circuit concluded that an bare assessment of basic knowledge and common sense in the absence of specific evidence was not sufficient to support an obviousness rejection under 35 U.S.C. § 103. (258 F.3d at 1386-87.) The patent examiner and the Board of Patent Appeals and

15 Interferences “cannot simply reach conclusions based on its own understanding or experience--or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” *Id.* This has not been done in the present case with respect to any of the features identified in the quote from the examiner set forth above.

20 Moreover, a statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made because the references relied upon teach that all aspects of the

claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. See M.P.E.P. § 2143.01 (citing *Ex parte Levengood*, 28 USPQ 2d 1300). This has not been done either. Accordingly, the obviousness rejection based on Massey cannot stand.

Notwithstanding the objection, the applicant also points out that the claimed invention differs significantly from Massey in that the present invention is directed towards a machine and methods for continuous action high-speed forming, filling, and sealing of pouches without interruption. Independent claims 1 and 9 have been amended 10 to refer to such “continuous” or “uninterrupted” action (already present in method claim 17). Antecedent basis for these amendments is found throughout the specification, for example on page 10, lines 17-19.

There can be no doubt that Massey describes an apparatus that is not continuous, since it describes a pause (a “dwell”) as the reciprocating jaw unit 14 travels from the 15 bottom of the down stroke to the top of the upstroke. “During the upstroke film brake 20 remains closed on the film.” (Col. 5, lines 35-36.) The brake 20 of Massey does not reciprocate, but holds the film in a stopped position during every cycle as the reciprocating unit 14 travels upward, waiting for the next cycle. “When . . . the jaw unit 14 has reached the top of its upstroke, the film brake 20 opens by actuation of the fluid 20 motor 83 and releases the film. The machine is then ready for a new cycle . . .” (Col. 5, lines 46-50.) Accordingly, the present invention is distinguished from Massey which does not disclose nor suggest any uninterrupted, continuous formation of film packets.

***Second Rejection Under 35 U.S.C. § 103***

The examiner has also rejected claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,761,016 to Soleri.

The examiner asserts that Soleri shows a packaging machine having a support  
5 structure for a pair of film supply rolls on the side of the machine, rollers to grip and feed  
the film from the supply (Fig. 6), a plurality of product dispensers (col. 6, lines 113-23),  
longitudinal heat sealers 20 that form a plurality of seals in the film, a plurality of blades  
21 aligned with the heat sealers, and opposing cross heat sealers 22 and cross blades 18 to  
cut the film into individual bags.

10 The examiner indicated that little patentable weight was given to the reciprocation  
of the cross sealers since the claims only stated that they were “capable” of reciprocation.  
In response, the “capable” language in the claims has been replaced, as noted above.

The examiner then made two conclusory statements without reference to any prior  
art: (1) “Furthermore, the use of longitudinally reciprocating cross sealers that move with  
15 the film instead of rotating sealers that move with the film are well known in the art and  
their substitution would have been obvious to one skilled in the art.” (2) “Although Soleri  
may be silent as to the reciprocating mechanisms, the use of independent reciprocating /  
driving mechanisms (claims 2, 10 & 17) for different machine units is well known in the  
art and would have been obvious modification to enable separate control of each unit.”

20 For the same reasons set forth above as to Massey, these conclusory statements  
are insufficient to establish a *prima facie* case of obviousness. *In re Zurko*, 258 F.3d  
1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001); M.P.E.P. § 2143.01 (citing *Ex parte*

*Levengood*, 28 USPQ 2d 1300). And, no objective reason to combine the teachings of the references has been shown. See M.P.E.P. § 2143.01 (citing *Ex parte Levengood*, 28 USPQ 2d 1300).

Furthermore, as with Massey, Soleri also does not disclose a machine for  
5 “continuous” action high-speed forming, filling, and sealing of pouches without interruption. Soleri clearly refers to a machine that is “*semi-continuous*,” having an acknowledged “dwell” time for the longitudinal side sealers. The specification in Soleri states that it is “not a ‘true’ continuous-motion machine because of the design of the multi-jaw traveling rotary cross seal system; which system pulls the film and pouches  
10 being made through the machine. There is an interruption in the movement of the film to allow the cross seals to return to their start position and the next set of cross-seal jaws to make contact with the film.” (Col. 3, lines 39-46). Soleri admits to teaching an invention that is only **semi-continuous**, and therefore does not teach or suggest the combination of elements presented in the application to create a truly continuous motion machine.  
15 Therefore, Soleri does not teach or suggest of a continuous form, fill, and seal apparatus or a continuous method therefor.

### ***Conclusion***

In view of the above, it is submitted that all claims are in condition for allowance. Reconsideration of the rejections is requested as discussed above. Allowance of all pending  
20 claims at an early date is solicited.

Prompt processing of the within application is requested.

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Respectfully Submitted,

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Amendment